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Supreme Court, U.S.
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No. 09-5

In The

Supreme Court of the United States

Andrew J Bullock IV,

Pro Se Petitioner,

v.

Arthur S. Klein, Esq., et al.,

Respondents,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Andrew J. Bullock IV,
Petitioner, Pro Se
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QUESTIONS PRESENTED:

Petitioner Andrew Bullock's Township implemented a Building Code, the Administration section (BOCA 1993, Section 107.3) of which clearly required a signed affidavit indicating permission of the 'owner in fee' to apply for a Building Permit. Petitioner owned a fee simple home in a Planned Community – not a condominium - subject to a Declaration containing contradictory language. The Association sent semi-annual Newsletters, frequently reminding owners to keep up their properties.

The questions presented are:

1) Respondent Township issued a building permit - at the knowing direction of Respondent Gleason - to Respondent homeowners' association, after Petitioner – the owner in fee - directed it to not issue a building permit. Was this correct?
2) The covenant relied on by the Court of Appeals has a conditional statement, " . . . to preserve the beauty, quality and value of the neighborhood, . . . ". In Pennsylvania, restrictive covenants are not favored, and are construed strictly. Petitioner's serviceable roof was replaced with a different color by the association. Did this exceed the provision, thereby infringing on Petitioner's right to exclude?

LIST OF PARTIES

Petitioner:

Andrew J Bullock IV, Pro Se

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Respondents:

Arthur S. Klein; Kenneth O. Spang, III; Scott F. Waterman; Marie R. Gleason; Thomas J. Crandall; Gerard J. Berger; Shayna F. Best; William M. Sunick, Jr.; Judith B. Wetzel; Donna M. Houghton; Ronald A. White; Christopher Conn; Elizabeth A. Shingle; Sergeant Barrar; Officer John Doe #s: 1 through 6; Captain Andrew Chambers; Hugh A. O'Hare; Thomas J. Foga, Jr.; Tredyffrin Township; Tredyffrin Township Police Department; Main Street Village Homeowners' Association; PENCO Management, Inc.; Edmund S. Pendleton; Donald Franceschini; Monika Germono; Bryn Mawr Landscaping Co., Inc.; Atlantic Roofing Corp.; Jim Miller Roofing and Sheet Metal, Inc.; James Miller; Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP; Black, Stranick & Waterman, LLP; David J. Scaggs; Blair H. Granger; Blair H. Granger & Associates, P.C.; Emeline Baldassarre; Judy L. Difillipo; Warren E. Kampf; Bill DeHaven; Paul J. Drucker; Robert W. Lamina;

Vincent Pompo; Mark Difeliciantonio; E. Brooks Keffer, Jr.; Thomas P. Hogan; Sovereign Bank; Baci Brothers Builders, Inc.; Arjet Baci; Syrja Baci; Ilir Baci; Patricia E. Evans; Kathryn Marinick.

Table of Contents

Questions Presented i
List of Parties ii
Table of Contents iv
Table of Citations v
Opinions Below..... 1
Statement of Jurisdiction..... 1
Petition for Writ of Certiorari 2
Relevant Constitutional and Statutory Provisions Involved 2
Statement of the Case 3
Conclusion 14
Index to Appendices 15

Table of Citations

Adickes v. S.H. Kress & Co.,
398 U.S. 144, 157 (1970)) .....

Boise Cascade Corp. v. United States, 296 F.3d 1339, 1343 (Fed. Cir. 2002) 7

Building Owners and Managers Association International, et al., v. FCC and United States of America, Satellite Broadcasting and Communications Association, et al., Intervenors, 99-1009, consolidated with 99-1021, (2001), USCA for the DC Circuit ....

The Commercial Bank of Manchester v. Buckner, S.C. 20 How. 108, at 109,110 (1858) 3

ERICKSON v. PARDUS ET AL.,
127 S.Ct. 2197 (2007) 3

Kaiser Aetna v. United States,
444 U.S. 164 (1979)..... 8

Loretto v. Teleprompter Manhattan CATV Corp.,
458 U.S. 419 (1982)..... 7

Shelley v. Kraemer,
334 U.S. 1 (1948) 10

Toews v. United States,
376 F3d 1371..... 5

Tuthill Ranch Inc v. United States,
381 F3d 1132 4

FCC:
In the Matter of Philip Wojcikiewicz
CSR-6030-0 .....

CONSTITUTION:
U.S. Const. amend. V ....
U.S. Const. amend. XIV . ...
TABLE OF AUTHORITIES – Continued Page
STATUTES:
28 U.S.C. § 1254(1) 1
42 U.S.C. § 1983 ....

State Cases
Assalita v. Chestnut Ridge Homeowners Association,
866 A.2d 1214 .....
Hess v. Barton Glen Club, Inc., 718 A.2d 908 (Pa. Cmwlth. 1998), appeal denied,
558 Pa. 623, 737 A.2d 745 (1999).....
In re Condemnation Proceeding by South Whitehall Township Authority,
940 A.2d 624 (Pa. Cmwlth. 2008).....
Kelso Woods Ass'n., Inc. v. Swanson,
692 A.2d 1132 (Pa. Cmwlth. 1997).....
Mayflower Square Condominium Association v. KMALM, Inc., 724 A.2d 389.....

INDEX TO APPENDICES:

Bullock v. Klein, et al, 08-4646, 3rd Cir(2009), McKEE, HARDIMAN and COWEN, Circuit Judges, Opinion filed: July 31, 2009 .... 1a

Bullock v. Klein, et al, Eastern District of Pennsylvania, 07-0621, EXPLANATION AND ORDER

October 21, 2008 Anita B. Brody, J. 11a

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is listed by that court as Not Precedential. That court's case number is 08-4646.

The opinion of the United States District Court appears at Appendix B to the petition. The EDPA case number is 2:07-CV-0621.

The trial court's ruling is 2:07-CV_0621. The Third Circuit's Case No. 08-4646 ruling is Per Curiam affirming Respondents' 12b6 Motion(s) to Dismiss.

Statement of Jurisdiction

The date on which the United States Court of Appeals decided my case was July 31, 2009. No timely petition for rehearing was filed in this case. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

Constitutional and Statutory Provisions Involved

Amendment V

No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. ... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State..., subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Andrew Jackson Bullock IV respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit.

STATEMENT OF THE CASE

Petitioner Bullock is proceeding Pro Se.

Respondent Township issued a building permit for Petitioner's fee simple home – over my objection. In doing so, Township Respondents violated their own township ordinance [which required permission of the owner], in that they accepted a building permit request from persons without standing, and issued a building permit over the objection of the owner.

Petitioner contends his property rights were infringed by that state action, that those property rights were protected by the 5th and 14th Amendments, and that actions of the Association Respondents were therefore 'under color of law'.

Association - through the Roofing Respondents - trespassed on Petitioner's property, and ripped off the roof of his home, permanently trespassing by replacing it with a roof of a different color.

Township Respondents contend that a building permit review board meeting - held 23 days after Petitioner's roof was removed - was sufficient Due Process consideration.

The right to exclude is a fundamental property right. That right, under due process, should be recognized to extend to control of building permits for fee simple property, including fee simple property in Common Interest Communities. A covenant or an easement may give certain rights to its holder – according to the particular community's governing

documents - but they are not superior to the record owners' rights.

Under the fundamental principles of internal document construction, contracts, particularly adhesion-type contracts like PUD Declarations, are construed strictly against the drafter.

Restrictive covenants are not favored, and are construed strictly in favor of the owner.

Easements are construed broadly to give effect to the intention of the parties, but only after the contract has been construed to determine there is a valid easement.

The Community Associations Institute [CAI], Industry data estimates in 2008 there were:

Communities	Housing Units	Residents
300,800	24.1 million	59.5 million

This is a national scale issue.

Petitioner's property is fee simple property.

The decision to issue the permit was made by the township manager, Respondent Gleason.

The decision directly violated the township's own procedures, implemented by ordinance, which implemented the – at the time – 1993 BOCA building code. That code's Administration section generally requires permission by the owner in fee.

In this case, persons obtained control of a homeowners' association – through an ongoing pattern of fraud – and applied for a building permit

for Petitioner's fee simple home, and were able to obtain that permit from Respondent Township over the objection of Petitioner. It was issued by Township, at the direction of the Township manager, Respondent Gleason, as noted in the text of the 3rd Amended Complaint.

Petitioner's original case was dismissed on a 12 b6 motion by numerous defendants. Respondent Main Street Village Homeowners' Association, in pursuing its state court litigation, never provided discovery even though repeatedly asked for access to records.

> "Fraud vitiates everything into which it enters. It is like the deadly and noxious simoom of arid and desert climes. It prostrates all before its contaminating touch, and leaves death only and destruction in its train. No act, however solemn, no agreement, however sacred, can resist its all-destroying power. All acts into which fraud enters are nullities." Mr. L Madison Day, The Commercial Bank of Manchester v. Buckner, S.C. 20 How. 108, at 109,110 (1858).

For a Pro Se litigant, dismissal on a 12b6 motion because – among other things – the opposing party refused access to records makes composing petitions practically impossible. In ERICKSON v.

PARDUS ET AL., 127 S.Ct. 2197 (2007) this honorable court said,

> "The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed pro se is "to be liberally construed," Estelle, 429 U. S., at 106, and "a pro se complaint,however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

Petitioner contends that vague and contradictory covenants should be construed strictly, in favor of the owner in a planned community. Easements for access should also be construed strictly; however, when found, should be enforced broadly to give them effect.

The Court of Appeals below contends:

> "Here, the Village's "Declaration of Covenants and Easements" explicitly allows the Association to replace Bullock's roof. (Supplemental Appendix 83.) Therefore, because Bullock covenanted away his property right to replace the roof on his home to the Association, his Fifth Amendment claim must fail."
>
> [p. 9, Appendix B]

The Commonwealth Court opined in Mayflower Square Condominium Association v. KMALM, Inc., 724 A.2d 389, 394 (Pa. Cmwlth. 1999).,

> "The fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties. The intention of the parties must be ascertained from the document itself, if its terms are clear and unambiguous. A contract is ambiguous if it is reasonably susceptible of different interpretations and capable of being understood in more than one sense. A determination of whether a contract is ambiguous is a question of law.

"As a contract, the Declaration's terms may be litigated in the same manner as any contract.", ***London Towne Homeowners Ass'n v. Karr***, 866 A.2d 447(Pa. Cmwlth. 2005)

In re Thompson, 896 A2d 659, at 666, footnote 3, "Only a landowner has standing to apply for relief in zoning matters. Section 107 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended,* 53 P.S. Section 10107;

"Where a zoning ordinance term is open to differing interpretations in its application to particular facts, we have held that the ambiguous term is to be construed in favor of the homeowner. *Kleinman v. Lower Merion Township ZHB*, 916 A.2d

725 (Pa.Cmwlth. 2006)", Heritage Building Group, Inc. V. Plumstead Twp. Board of Supervisors, PACommw. No. 1387 C.D. 2007, Opinion not Reported.

The FCC and the USCA for the DC Circuit discuss this issue in:

In FCC 07-98, In the Matter of Philip Wojcikiewicz, Application for Review, CSR-6030-0, the commission states [edited sections]:

'However, the lease, condominium declaration, deed or other controlling document is dispositive in individual situations. The Bureau decision found that Petitioner had the requisite property interest based upon the Petitioner's warranty deed and the Declaration for Woodmere Townhomes which indicate that Petitioner owns the lot and home in fee simple ownership.'

'We conclude it is explicit in the warranty deed (the controlling document) that Petitioner owns his townhome and there is no dispute to his ownership. Moreover, we have found previously that "the fact that the Association has responsibility for the repairs, replacements and maintenance . . . where the antenna would be mounted is not controlling.' [do not defeat owners' rights].

"The express language in the Woodmere Townhome Declaration gives Petitioner an ownership interest in his townhome, including the roof, and

nothing offered by the Applicants contradicts this language."

In Building Owners and Managers Association International, et al., v. FCC and United States of America, Satellite Broadcasting and Communications Association, et al., Intervenors, 99-1009, consolidated with 99-1021, (2001), USCA for the DC Circuit, the Court discusses " . . . a compelled physical invasion of property, and hence a per se taking . . .".

Federal Communications Commission:

1) In the Matter of: Philip Wojcikewicz, CSR-6030-0, DA03-2971 (2003)

2) In the Matter of: Michael and Alexandra Pinter, CSR-6245-0, DA04-2893 (2004)

3) In the Matter of: Philip Wojcikiewicz, CSR-6030-0, FCC-07-98 (2007)

[With regard to satellite dish installation, but construing the difference between easements to maintain and ownership [governed by the controlling document [Declarations], and 'the rights of third parties to enter . . . [f]or such reasons as inspection or maintenance do not defeat the owner's rights . . . "

The 3rd Circuit cites Tuthill Ranch Inc v. United States, 381 F3d 1132 , but it is distinguishable. The infringement in that case was apparently light signals through fiber optic lines, installed within the physical space the easement clearly allowed. BPA, undoubtedly, paid for the replacement of the signal lines. BPA also paid

consideration for the easement. Tuthill would be more analogous if BPA had required Tuthill to pay to replace the signal lines and towers across what was probably his 'south forty', rather than, in my case, the still serviceable roof on my house, which did not need to be replaced.

The logic of the dissent, however, in Tuthill, also citing Toews v. United States, 376 F3d 1371. is the clearest I found:

> In TUTHILL RANCH, INC., v. UNITED STATES, MAYER, Chief Judge, dissenting:
>
> I dissent because the objective evidence shows that Bonneville Power Authority (BPA) installed fiber optic cable with excess fibers which exceeded operational needs, mainly because it wanted to generate revenue by leasing the excess to telecommunications providers. The installation of a thirty-six fiber cable across the Tuthill Ranch (Tuthill) was not "necessary in connection" to maintaining the electrical power transmission lines. Therefore, this installation is outside the scope of the easement and is a taking compensable under the Fifth Amendment because BPA has permanently occupied physical space and deprived Tuthill of the right to exclude others.
>
> Contrary to the court, the proper course is first to construe the easement to determine

whether the challenged activity is within its bounds. See Toews v. United States, 376 F3d 1371. If BPA's activity is within the scope of the easement, the takings analysis ends. If, however, its activities exceed the easement in a manner not contemplated by the parties, and BPA has physically occupied Tuthill's property, a takings claim exists. When evaluating a takings claim the court first "determines whether the plaintiff possesses a valid interest in the property affected by the governmental action, i.e., whether the plaintiff possessed a stick in the bundle of property rights. If so, the court proceeds to the second step, determining whether the governmental action at issue constituted a taking of that stick." Boise Cascade Corp. v. United States, 296 F.3d 1339, 1343 (Fed. Cir. 2002) (internal citations and quotations omitted).

We construe the scope of an easement from the parties' intent, which we ascertain from the relevant instruments and the objective circumstances to which they refer. See Sunnyside Valley Irrigation Dist. v. Dickie, 73 P.3d 369, 372 (Wash. 2003) ("The intent of the original parties to an easement is determined from the deed as a whole. If the plain language is unambiguous, extrinsic evidence will not be considered.") (internal citations omitted).

In Loretto v. Teleprompter Manhattan CATV

Corp., 458 U.S. 419 (1982), this Honorable Court held:

> "a physical intrusion by government [is] a property restriction of an unusually serious character for purposes of the Takings Clause." Id. at 426 (internal quotations omitted). The Court further held that "when the physical intrusion reaches the extreme form of a permanent physical occupation, a [per se] taking has occurred."

The Loretto court emphasized that the per se taking rule is "very narrow" and applies only to regulations that "require the landlord to suffer the physical intrusion of his building by a third party." Id. At 440-41.

> The line which separates [landlord-tenant] cases from Loretto is the unambiguous distinction between a commercial lessee and an interloper with a government license." Id. at 252-53 Consequently, "[w]hile the 'right to exclude' is doubtless ... 'one of the most essential sticks in the bundle of rights that are commonly characterized as property,' ... that right [was not] taken from petitioners on the mere face of the [regulation]." Id. (quoting Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979)).

In this case, those purporting to be the homeowner's association ripped off a serviceable roof.

Roof replacement is not a minor task, and there's quite a bit of waste involved.

My homeowner's association was notified during the roof project that the firewalls were not constructed according to the design documents [yes, I can read a blue-line drawing - from engineering drafting class]. In my home, every cinder block course is missing the end diagonal block. The township was made aware of this via digital pictures, and sent the letter to the HOA. No action was taken with regard to the fire hazard.

Also during the project, another homeowner's house was found to be missing every other roof truss. The rest of us were made to pay for this. That fact clearly resides outside an 'exterior maintenance' covenant, even if one grants the HOA the option to divvy up the extra cost.

I mention this only to illustrate the actions of the purported 'Association' Respondents.

REASONS FOR GRANTING THE PETITION

This would give this Honorable Court the opportunity to resolve what I believe is a split between the recognized and protected property rights of homeowners in planned communities with regard to easements, as the FCC case, Tuthill, and this case seem to differ.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew J. Bullock IV
November 3, 2009

INDEX TO APPENDICES:

Bullock v. Klein, et al, 08-4646, 3rd Cir(2009), McKEE, HARDIMAN and COWEN, Circuit Judges, Opinion filed: July 31, 2009 .... 1a

Bullock v. Klein, et al, Eastern District of Pennsylvania, 07-0621, EXPLANATION AND ORDER

October 21, 2008 Anita B. Brody, J. 7a

APPENDIX: A

Case: 08-4646 Document: 00319748185 Page: 1 Date Filed: 07/31/2009

NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-4646

ANDREW J. BULLOCK, IV,
Appellant

v.

ARTHUR S. KLEIN, Esquire; KENNETH O. SPANG, III, Esquire; SCOTT F. WATERMAN, Esquire; MARIE RITA GLEASON, Esquire, individually, and in her capacity as Township Manager of Tredyffrin Township, Chester County, Commonwealth of Pennsylvania; THOMAS J. CRANDALL, individually and in his capacity as purported Board Member of Main Street Village Homeowners' Association; GERARD J. BERGER, individually and in his capacity as purported Board Member of Main Street Village Homeowners' Association; SHAYNA F. BEST, individually and in her capacity as purported Board Member of Main Street Village Homeowners' Association; WILLIAM M. SUNICK, JR., individually and in his capacity as purported Board Member of

Main Street Village Homeowners' Association; DONNA M. HOUGHTON, individually and in her capacity as purported Board Member of Main Street Village Homeowners' Association; RONALD WHITE, individually and in his capacity as purported Board Member of Main Street Village Homeowners' Association; CHRISTOPHER CONN, individually and in his capacity as relates to Atlantic Roofing; SGT. BARRAR, Tredyffrin Township Police Department, individually, and in his capacity as Police Officer of Tredyffrin Township; OFCR. JOHN DOE (1-6), individually and in their capacity as Police Officers of Tredyffrin Township; CAPT. ANDREW CHAMBERS, individually and in his capacity as Captain of Tredyffrin Township Police Department; HUGH A. O'HARE, individually and in his capacity as Chief Building Code Officer of Tredyffrin Township; THOMAS J. FOGA, JR., individually and in his capacity as Treasurer of Bryn Mawr Landscaping; TREDYFFRIN TOWNSHIP, CHESTER COUNTY, COMMONWEALTH OF PENNSYLVANIA; TREDYFFRIN TOWNSHIP POLICE DEPARTMENT; MAIN STREET VILLAGE HOMEOWNERS' ASSOCIATION; PENCO MANAGEMENT INC; EDMUND S. PENDLETON, individually and in his capacity as President of Penco Management Inc.; BRYN MAWR LANDSCAPING CO INC; ATLANTIC ROOFING CORP; JIM MILLER ROOFING AND SHEET METAL INC;

JAMES MILLER, individually in his capacity as President of Jim Miller Roofing and Sheet Metal Inc; WISLER, PEARLSTEIN, TALONE, CRAIG, GARRITY & POTASH, LLP.; BLACK, STRANICK & WATERMAN, LLP; DAVID J. SCAGGS, Esquire; BLAIR H. GRANGER, Esquire; BLAIR H. GRANGER & ASSOCIATES, P.C.; MS. EMELINE BALDASSARREE, individually and in her capacity as Building Inspector of Tredyffrin Township, Chester County, Commonwealth of Pennsylvania; JUDY L. DIFILLIPO, individually and in her capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; WARREN E. KAMPF, Esquire, individually and in his capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; BILL DEHAVEN, individually and in her capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; PAUL J. DRUCKER, Esquire, individually and in his capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; ROBERT W. LAMINA, individually and in his capacity as Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; VINCENT POMPO, Esquire, and in his capacity as Solicitor for Tredyffrin Township,

Chester Co.,Commonwealth of Pennsylvania; MARK DIFELICIANTONIO, individually and in his capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; E. BROOKS KEFFER, JR., Esquire, individually and in his capacity as Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; ELIZABETH A. SHINGLE, individually and in her capacity as Managing Agent for Main Street Village Homeowners' Association; MONIKA GERMONO, individually and in her capacity as purported Agent for purported Main Street Village Homeowners' Association; THOMAS P. HOGAN, Esquire; SOVEREIGN BANK; BACI BROTHERS BUILDERS INC.; ARJET BACI; SYRJA BACI; ILIR BACI; JUDITH M. WETZEL, individually and in her capacity as purported Board Member of Main Street Village Homeowners' Association; PATRICIA E. EVANS; KATHRYN MARINICK; DON FRANCESCHINI

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-07-cv-00621)
District Judge: Honorable Anita B. Brody

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 23, 2009

Before: McKEE, HARDIMAN and COWEN, Circuit Judges

(Opinion filed: July 31, 2009)

OPINION

PER CURIAM

Appellant Andrew J. Bullock, IV, appeals from the dismissal of his civil suit pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, we will affirm the district court's judgment.

We assume the parties' familiarity with the facts, as set forth by the District Court in its dismissal order. Essentially, this litigation stems from a disagreement between Bullock and the Main Street Village Homeowners' Association ("the Association") over the Association's replacement of Bullock's roof. Bullock owned and occupied a home in Main Street Village ("Village") which the Association managed. On July 16, 2003, the Association called a meeting of all homeowners to vote on whether to impose a special assessment to finance roof replacements in Main Street Village. Bullock was not allowed to vote, however, because he owed more than $1,000 in dues to the Association. On September 2, 2003, the Association sent a letter to all homeowners in Main Street Village stating that they had

"overwhelmingly approved" a special assessment financing and authorizing the roof replacement project.

The Association requested that Tredyffrin Township ("Township") issue permits for the roof replacements for all properties in the Village. Bullock, orally and in writing, requested that the Township not issue a building permit for his house. Despite Bullock's request, the Township issued the permit and Bullock's roof was replaced.

In February 2007, Bullock filed a lengthy complaint in the district court against numerous defendants asserting claims under federal and state law. In his third amended complaint, Bullock averred that certain Association and Township officials violated his "5th Amendment property rights" by replacing his roof without his permission.(1) The district court, acting on several of the defendants' motions pursuant to Fed. R. Civ. P. 12(b)(6) and, in part, acting sua sponte, dismissed all claims and defendants: 1) for failing to state a claim; 2) for lack of standing; and 3) because several of the claims were criminal claims improperly filed as civil claims. Bullock filed a timely notice of appeal challenging the district court's dismissal.

1) The Fifth Amendment provides in relevant part that "private property [shall not] be taken for public use, without just compensation."

We have jurisdiction over final orders of district courts under 28 U.S.C. § 1291. Our review of the district court's dismissal of a complaint pursuant to Rule 12(b)(6) is plenary. McGovern v. City of Phila., 554 F.3d 114, 115 (3d Cir. 2009). In determining whether a district court properly dismissed a complaint under Rule 12(b)(6), we are required to "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (citation omitted). However, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (citation omitted).

On appeal, Bullock claims that the district court ignored his Fourteenth Amendment due process claims against Township and Association defendants who were involved with the issuance of the building permits for his roof replacement. Bullock also asserts that he pleaded sufficient facts to state a § 1983 claim that the Township and the Association

violated his Fifth Amendment property rights. Finally, Bullock challenges the district court's finding

that his claims pursuant to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO") are time barred.

Bullock's claims are without merit. To hold a municipality liable under § 1983, Bullock had to show that the Township's official policy or custom caused the deprivation of a federal right. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 694 (1978). As the district court held, to establish a Fifth Amendment violation, Bullock was required to show that a "taking" occurred. In order to state a "taking claim," Bullock had to allege facts showing that Township infringed on one of his protected property rights. See Rogers v. Bucks County Domestic Relations Section, 959 F.2d 1268, 1275 (3d Cir. 1992). Here, the Village's "Declaration of Covenants and Easements" explicitly allows the Association to replace Bullock's roof. (Supplemental Appendix 83.) Therefore, because Bullock covenanted away his property right to replace the roof on his home to the Association, his Fifth Amendment claim must fail. See, e.g., Tuthill Ranch, Inc. v. United States, 381 F.3d 1132, 1139 (Fed. Cir. 2004) (No Fifth Amendment taking claim where optical fiber signal lines are installed within the terms of the original easement).

Further, because the Township's issuance of the building permit did not infringe on Bullock's protected property interest, his procedural due

process arguments relating to the building permit also do not state a claim upon which relief may be granted. See Burns v. Pa. Dep't of Corr., 544 F.3d 279, 285 (3d Cir. 2008) ("To prevail on a procedural due process claim, a litigant must show 1) that the state deprived him of a protected interest in life, liberty, or property . . . "). Even if Bullock had a protected interest, the record shows that he was provided with both adequate notice and a reasonable opportunity to be heard. See Deibler v. City of Rehoboth Beach, 790 F.2d 328, 331 (3d Cir. 1986).

Finally, the district court held that Bullock's claims under RICO were time barred. Bullock alleged that certain defendants formed a "RICO Enterprise" on August 8, 2002, around the same time he sent a letter to the Association. Bullock did not file his lawsuit until February 15, 2007. The Supreme Court has held that a four-year statute of limitations applies to all civil actions under the RICO statute. Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156 (1987). A RICO claim accrues, however, not at the time of injury but at the time when the plaintiff discovers the injury. See Forbes Eagleson, 228 F.3d 471, 484 (3d Cir. 2000) (RICO claims begin to accrue when a plaintiff discovers the injury). It is unclear, from the pleadings, when Bullock became aware of the alleged RICO Enterprise. Even if this claim was timely filed, however, the district court properly dismissed the

claim as it was not properly pleaded. Because Bullock alleged a RICO cause of action predicated on mail and wire fraud, he was required to plead the circumstances of his claim with particularity. See Fed. R. Civ. P. 9(b); Lum v. Bank of America, 361 F.3d 217, 223-24 (3d Cir. 2004). Bullock's conclusory mail and wire fraud assertions fall short of this higher standard of pleading. Therefore, we agree with the district court, albeit for a different reason, that Bullock failed to state a RICO claim upon which relief could have been granted. (2)

For the foregoing reasons, we will affirm the judgment of the district court. Appellee Tredyffrin Defendant's motions to expand the record and to file a supplemental appendix are granted. Appellant's motions to file an amended reply brief and to expand the record are also granted.

2) Bullock requests that we remand to the district court so that he may be given an opportunity to amend his complaint. (Appellant's Reply Br. at 8.) We note that the district court allowed Bullock to amend his complaint three times before granting appellees' motion to dismiss. It is apparent that allowing Bullock leave to amend his complaint further would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 112-13 (3d Cir. 2002) (dismissals of frivolous claims do not require leave to amend due to the long tradition of denying leave to amend under Fed. R. Civ. P. 15(a) when amendment is inequitable or futile).

APPENDIX: B

Case 2:07-cv-00621-AB Document 82 Filed 10/23/2008 Page 1 of 17

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW J. BULLOCK,
Plaintiff.

v.

ARTHUR S. KLEIN, et al.,
Defendants.

CIVIL ACTION
NO. 07-0621
EXPLANATION AND ORDER

October _21__, 2008 Anita B. Brody, J.

I. INTRODUCTION

On March 24, 2008, Plaintiff Andrew J. Bullock ("Bullock") filed a Third Amended Complaint (Doc. #56) against fifty-six (56) defendants.(1) Seven motions to dismiss followed. On March 26, 2008, sixteen (16) defendants called "Association Defendants"(2) filed a Motion to Dismiss or Strike the Third Amended Complaint (Doc. #58). On April 2, 2008, Defendants Scott F. Waterman and Black, Stranick & Waterman, LLP, filed a Motion to Dismiss the Third Amended Complaint (Doc. #60). On April 4,

2008, Defendants Christopher Conn and Atlantic Roofing Corp. filed a Motion to Dismiss the Third Amended Complaint (Doc. #61).

On April 14, 2008, twenty-two (22) defendants called "Tredyffrin Defendants"(3) filed a Motion to Dismiss the Third Amended Complaint (Doc. #64). On May 9, 2008, Defendants Blair H. Granger, David J. Scaggs, and Blair H. Granger & Associates, P.C., filed a Motion to Dismiss the Third Amended Complaint (Doc. #67).

1) The defendants are Arthur S. Klein; Kenneth O. Spang, III; Scott F. Waterman; Marie R. Gleason; Thomas J. Crandall; Gerard J. Berger; Shayna F. Best; William M. Sunick, Jr.; Judith B. Wetzel; Donna M. Houghton; Ronald A. White; Christopher Conn; Elizabeth A. Shingle; Sergeant Barrar; Officer John Doe #1; Officer John Doe #2; Officer John Doe #3; Officer John Doe(1, cont.) #4; Officer John Doe #5; Officer John Doe #6; Captain Andrew Chambers; Hugh A. O'Hare; Thomas J. Foga, Jr.; Tredyffrin Township; Tredyffrin Township Police Department; Main Street Village Homeowners' Association; PENCO Management, Inc.; Edmund S. Pendleton; Donald Franceschini; Monika Germono; Bryn Mawr Landscaping Co., Inc.; Atlantic Roofing Corp.; Jim Miller Roofing and Sheet Metal, Inc.; James Miller; Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP; Black, Stranick & Waterman, LLP; David J. Scaggs; Blair H. Granger; Blair H. Granger & Associates, P.C.; Emeline Baldassarre; Judy L. Difillipo; Warren E. Kampf; Bill DeHaven; Paul J. Drucker; Robert W. Lamina; Vincent Pompo; Mark Difeliciantonio; E. Brooks Keffer, Jr.; Thomas P. Hogan; Sovereign Bank; Baci Brothers Builders, Inc.; Arjet Baci; Syrja Baci; Ilir Baci; Patricia E. Evans; Kathryn Marinick.

2) Association Defendants are Main Street Village Homeowners Assocation, PENCO Management, Inc., Monika Germono, Ronald A. White, Elizabeth A. Shingle, Arthur S. Klein, Thomas J. Crandall, Gerard J. Berger, Shayna F. Best, William M. Sunick, Judith M. Wetzel, Donna M. Houghton, Patricia E. Evans, Kathryn Marinick, Edmund S. Pendleton, and Donald Franceschini.

3) Tredyffrin Defendants are Tredyffrin Township, Tredyffrin Township Police Department, Judy L. Difillipo, Warren E. Kampf, Bill DeHaven, Robert W. Lamina, E. Brooks Keffer, Jr., Paul J. Drucker, Mark Difeliciantonio, Marie R. Gleason, Hugh A. O'Hare, Emeline Baldassarree, Vincent Pompo, Thomas P. Hogan, Captain Andrew Chambers, Sergeant Barrar, Officer John Doe #1, Officer John Doe #2, Officer John Doe #3, Officer John Doe #4, Officer John Doe #5, and Officer John Doe #6.

4) The eight defendants who have not filed motions to dismiss are Thomas J. Foga, Jr., Bryn Mawr Landscaping Co., Inc., Jim Miller Roofing and Sheet Metal, Inc., James Miller, Baci Brothers Builders, Inc., Arjet Baci, Syrja Baci, and Ilir Baci.

On June 9, 2008, Defendants Kenneth O. Spang, III, and Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP, filed a Motion to Dismiss the Third Amended Complaint (Doc. #70). Finally, on June 30, 2008, Defendant Sovereign Bank filed a Motion to Dismiss the Third Amended Complaint (Doc. #72). This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331. For the reasons stated below, I will grant the seven motions to dismiss (Doc. ##58, 60, 61, 64, 67, 70, and 72). Also, on my own motion, I will dismiss Bullock's claims against all other defendants.(4)

II. FACTUAL BACKGROUND(5)

From August 28, 1997, until recently, Bullock owned and occupied 22 Sturbridge Lane in Wayne, Pennsylvania. The house was located in the Main Street Village neighborhood in Chesterbrook, Tredyffrin Township. Defendant Main Street Village Homeowners' Association ("Association") managed Main Street Village. A document titled "Declaration of Covenants and Easements" governed the relationship between homeowners and the Association.

5) In reviewing a motion to dismiss pursuant to F.R.C.P. 12(b)(6), "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). Therefore, the facts are stated in the light most favorable to the non-moving party.

At some point before October, 1999, Bullock complained to the Association that the retaining wall in his yard was defective and allowed water to enter his basement. In response, the Association contracted to have the wall rebuilt, albeit without obtaining a permit or using a licensed contractor, and the contractor incorrectly installed a pipe behind the wall. On October 17, 1999, Bullock's basement flooded during a thunderstorm, causing damage to his personal property in an amount over $3,298.89. Elizabeth Shingle ("Shingle"), managing agent for the Association, denied that the Association was responsible for the property damage. About two weeks later, Bullock's basement flooded again during another thunderstorm.

After the second flood, an engineer came to assess the retaining wall. Shingle told Bullock that the engineer believed that nothing could be done. In response, Bullock stopped paying his monthly assessments to the Association. The Association then sued Bullock for the unpaid assessments ("Association Lawsuit"). After Bullock attended a board meeting of the Association to discuss matters, Shingle sent Bullock a letter from the Association dated January 31, 2001, stating that the Association would have the retaining wall fixed but would not pay for damage to Bullock's personal property.

On February 22, 2001, Bullock hired Defendant David J. Scaggs ("Scaggs") to defend him

in the Association Lawsuit. Scaggs encouraged Bullock to settle for $1,500 and prepared a settlement agreement. Bullock reviewed and signed the agreement but directed Scaggs not to fax it to the Association until Bullock had heard from the Association and notified Scaggs. Without Bullock's permission, Scaggs faxed the agreement. On May 8, 2001, Scaggs sent a letter to the Hon. Jeremy M. Blackburn stating incorrectly that the "matter has settled." (Compl. ¶ 22.) Finally, Scaggs sent Bullock a bill for the representation.

In January, 2002, Bullock submitted a "Candidate Data Sheet" for election to the Association's board of directors ("Board") at the 2002 annual meeting. On February 4, 2002, Shingle sent Bullock a letter from the Association declining his candidacy. Bullock objected to the subsequent election on the ground that, according to the Association's bylaws and other law, his candidacy should not have been declined. The Association's bylaw titled "RULES OF ORDER" cites Robert's Rules of Order. At the meeting, Defendant Arthur S. Klein ("Klein") stated "[w]e don't go by Robert's Rules," an authority Bullock had cited, because "[t]hat's not a legal document." (Compl. ¶ 32.) On August 8, 2002, Bullock sent a letter to the Association declaring that Shingle's letter and Klein's statement constituted "a clear and unambiguous repudiation of your obligation under

the Declaration of Covenants and Easements" and that Bullock would "treat this as a breach of contract."(6) (Compl. ¶ 33.)

In the Association Lawsuit, the Court of Common Pleas of Chester County entered a default judgment against Bullock, who appealed. By consequence, on October 22, 2002, the Association sold some of Bullock's personal property through a sheriff's sale. On November 6, 2002, Defendant Kenneth O. Spang, III, ("Spang") sent Bullock a letter stating that Bullock still owed the Association $10,266.11, an amount that included his monthly assessments for December, 2002, and January, 2003. The letter was printed on letterhead of Defendant Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP ("Wisler-Pearlstine").

On January 2, 2003, Bullock sent the Association a letter requesting "a complete accounting of the amount (approximately ten thousand dollars) requested in your previous settlement offer." (Compl. ¶ 36.) Bullock also requested that the Association "make available by January 10, 2003, the complete records of Main Street Village Homeowners' Association, for my review and copying at Penco [sic] Management's

6) On January 14, 2003, Bullock submitted another Candidate Data Sheet for the 2003 annual meeting. The following day, the Association sent Bullock a letter declining his candidacy. On January 26, 2007, Bullock submitted a Candidate Data Sheet for the 2007 annual meeting.

office in Chadds Ford." (Id.) Spang responded with a letter stating that Bullock's request was "overly broad and burdensome" and that, having failed to pay assessments, he was not entitled to review any records. (Compl. ¶ 39.)

On January 6, 2003, Defendant PENCO Management ("PENCO") sent Bullock a letter indicating that he was "prohibited from returning to any of PENCO's offices."(7) (Compl. ¶ 36.)

On July 16, 2003, the Association called a meeting of all homeowners to vote on whether to impose a special assessment to finance roof replacements in Main Street Village. Pursuant to a motion by Defendant Thomas Crandall ("Crandall"), the Board had decided that homeowners who owed more than $1,000 to the Association would not be

7) On this matter, Bullock had a conversation with Defendant Ronald White ("White") on March 10 or 11, 2004. On March 12, 2004, White sent a letter to Bullock stating that "there are records that you as a homeowner are not privy to ... [so] specify in detail what records you are referring to and I will discuss your responds (sic) with the Board." (Compl. ¶ 72) On March 19, 2004, Bullock left this message for White: "everything else." (Compl. ¶ 73) On June 30 and July 23, 2006, Bullock asked Defendant William M. Sunick ("Sunick") for all of the approved minutes of meetings of the Board from February, 2005, to late June, 2006. Sunick responded: "That would be unethical." (Compl. ¶ 74)

allowed to vote.(8) Accordingly, Bullock was not allowed to vote at the meeting. On September 2, 2003, the Association sent a letter to all homeowners in Main Street Village stating that they had "overwhelmingly approved" a special assesment financing and authorizing the roof replacement project. (Compl. ¶ 50.)

On October 20, 2003, Klein faxed a letter to Defendant Tredyffrin Township ("Township") requesting that permits be issued on all properties in Main Street Village. On November 7, 2003, Bullock delivered a letter to Township directing it not to issue a permit for his house. On December 17, 2003, Klein sent another letter to Township indicating that the homeowners had authorized Klein to sign the permits. On May 24, 2004, Klein faxed a letter to Township "specifically requesting that a permit be issued pursuant to the authority give [sic] me by the homeowners for 22 through 26 Sturbridge Lane." (Compl. ¶ 56.) Bullock then orally reminded Township not to issue a building permit for his house.

On May 20, 2004, Defendant Marie R. Gleason ("Gleason") directed Defendant Emeline Baldassarre ("Baldassarre") to issue the permits. Gleason also left a phone message with Bullock stating that she

8) Klein, Crandall, Gerard Berger ("Berger"), Donna Houghton ("Houghton"), and Shayna Best ("Best") were present when the Board made this decision.

"wasn't interested" in his information and that Klein's documents "appear to me to be very standard." (Compl. ¶ 58.) Defendant Christopher Conn ("Conn") of Defendant Atlantic Roofing Co. certified the permit application, affirming: "I hereby certify that ... the proposed work is authorized by the owner of record." (Compl. ¶ 85.) Bullock alleges that Township had and "continues the same policy of requiring homeowners' association approval before permits can be issued ... [with] no procedure to see if any HOA actually owns any particular property rather than the equitable owner." (Compl. ¶ 66.)

When roofers came to Bullock's house, Defendant Seargant Barrar ("Barrar") and Defendant Officer John Doe #1 ("Doe #1") arrived in uniform and armed. They declined Bullock's request for them to remove the roofers, and looked on while Bullock argued with Klein and the roofers. Ultimately, Bullock's roof was replaced.

Some time later, Defendant Sovereign Bank initiated foreclosure proceedings on Bullock's house at 22 Sturbridge Lane. On February 14, 2007, Bullock brought the instant action. The following day, February 15, 2007, Defendant Baci Brothers Builders, Inc., purchased Bullock's house at a sherrif's sale.

Bullock makes two allegations relating to his neighbor. First, in October, 2006, the Association announced a sherrif's sale at 23 Sturbridge Lane,

whose owner was foreign-born and owed less than Bullock's alleged debt. Second, the Association at some point made the owner of 23 Sturbridge Lane remove a satellite dish "which appeared to conform to the < 1 meter standard" set forth in the Telecommunications Act of 1996. (Compl. ¶ 137.)

III. DISCUSSION

Bullock's Third Amended Complaint ("Complaint") asserts various claims arising under federal and state law against an uncertain number of defendants. The Complaint leaves ambiguous, however, which claims Bullock asserts against which defendants. Therefore, I will proceed as follows. Based on Section A, I will dismiss all claims against thirty (30) named defendants about whom Bullock makes no factual allegations. Based on Sections B through D, I will dismiss all federal claims mentioned anywhere in the Complaint. After carefully studying his Complaint, I have found only nine federal claims asserted by Bullock. Based on Section B, I will dismiss four under Fed. R. Civ. Pro. 12(b)(6); based on Section C, I will dismiss two others because Bullock lacks standing; and based on Section D, I will dismiss the remaining three because they are criminal in nature. Finally, based on Section E, I will exercise my discretion under 28 U.S.C. § 1367(c)(3) to dismiss all remaining state law claims. Thus, all claims and defendants will be dismissed.

A. Defective Pleading

The Complaint's caption names thirty (30) defendants about which Bullock makes no factual allegations. The Complaint does not mention twenty-four (24) of these defendants again(9) and mentions the other six only in passing.(10) In this manner, the Complaint violates Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Pro. 8(a)(2). Accordingly, I will dismiss Bullock's claims against those thirty (30) defendants. These defendants include eight who have not filed motions to dismiss. (11)

9) The defendants named in the Complaint's caption but never again mentioned are Judith B. Wetzel; Officer John Doe #3; Officer John Doe #4; Officer John Doe #5; Officer John Doe #6; Captain Andrew Chambers; Hugh A. O'Hare; Thomas J. Foga, Jr.; Edmund S. Pendleton; Bryn Mawr Landscaping Co., Inc.; Jim Miller Roofing and Sheet Metal, Inc.; James Miller; Judy L. Difillipo; Warren E. Kampf; Bill DeHaven; Paul J. Drucker; Robert W. Lamina; Mark Difeliciantonio; E. Brooks Keffer, Jr.; Arjet Baci; Syrja Baci; Ilir Baci; Patricia E. Evans; and Kathryn Marinick.

10) The defendants named in the Complaint's caption but later mentioned only in passing are Atlantic Roofing Corp. (see Compl. ¶¶ 59, 85); Black, Stranick & Waterman, LLP (see Compl. ¶ 98); Blair H. Granger (see Compl. ¶ 207); Blair H. Granger & Associates, P.C., id.; Vincent Pompo (see Compl. ¶ 69); and Thomas P. Hogan (see Compl. ¶ 87).

11 See supra note 4.

Thus, I will dismiss Bullock's claims against these eight defendants on my own motion. See Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980) ("The district court may on its own initiative enter an order dismissing the action provided that the complaint affords a sufficient basis for the court's action."); Bowers v. Nat'l Collegiate Athletic Ass'n, 9 F. Supp. 2d 460, 497-98 (D.N.J. 1998) ("The Court may, sua sponte, dismiss a claim as to non-moving defendants where the inadequacy of the claim is clear.").

B. Failure to State a Claim

Defendants(12) move to dismiss Bullock's Third Amended Complaint for "failure to state a claim upon which relief can be granted" pursuant to Fed. R. Civ. Pro. 12(b)(6). According to Rule 12(b)(6), a complaint must "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964 (2007). The allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id. At 1965. "This 'does not impose a probability requirement at the pleading stage,' but instead 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element.'"

12) This refers to all who filed motions to dismiss.

Phillips v. County of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008) (quoting Bell Atl. Corp., 127 S.Ct. At 1965).

1. The Fair Debt Collection Practices Act

Bullock asserts claims against Spang and Wisler-Pearlstine under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-92p (2008) ("FDCPA"). Bullock alleges that Spang's letter to Bullock dated November 2, 2002, and printed on Wisler-Pearlstine letterhead contains statements violating the FDCPA. (Compl. ¶ 35.)

The FDCPA provides that "[a]n action to enforce any liability created by this [act] ... may be brought ... within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). Where a plaintiff brings an FDCPA action based on the mailing of a letter, the statute of limitations period begins running around when the defendant mailed the letter. See Mattson v. U.S. West Communications, Inc., 967 F.2d 259, 261 (8th Cir. 1992) (holding that the period begins running on the day that the defendant mailed the letter); Maloy v. Phillips, 64 F.3d 607, 608 (11th Cir. 1995) (holding that the period begins running on the day after the date that the defendant mailed the letter); Johnson v. Riddle, 305 F.3d 1107, 1115 (10th Cir. 2002) (same).

Bullock initiated this action on February 14, 2007, over four years after November 2, 2002, when Spang mailed the letter allegedly violating the

FDCPA. Thus, § 1692k(d) precludes Bullock's claims against Spang and Wisler-Pearlstine. Therefore, I will grant Spang and Wisler-Pearlstine's motion to dismiss Bullock's claims under the FDCPA.

2. Section 1983: Takings Clause

Bullock asserts claims against Tredyffrin, Gleason, Baldassarree, Police Department, Barrar, and Doe #1 under 42 U.S.C. § 1983. To establish a prima facie case under § 1983, a plaintiff must show that:

1. Someone deprived him of a federal statutory or constitutional right; and

2. The person who deprived him of that right acted under color of state or territorial law.

Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995) (citing Gomez v. Toledo, 446 U.S. 635, 640 (1980)). To hold a municipality liable under § 1983, moreover, the plaintiff must also show that the municipality's official policy or custom caused the deprivation of his federal right. Monell v. Dep't of Soc. Serv., 436 U.S. 658, 694 (1978).

Bullock claims that Tredyffrin, Gleason, Baldassarree, Police Department, Barrar, and Doe #1 violated his "right of property" under the Takings Clause of the Fifth Amendment. (Compl. ¶¶ 65, 102-105, 203.) The clause provides: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. To establish a Takings Clause violation, a plaintiff must show,

among other things, that a "taking" occurred. "Not every physical invasion is a taking." Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 436 n.12 (1982) (emphasis omitted). Temporary invasions "are subject to a ... balancing process to determine whether they are a taking." Id. "[S]everal factors are particularly significant—the economic impact of the regulation, the extent to which it interferes with investment-backed expectations, and the character of the governmental action." Id. at 432 (citing Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978)).

Bullock alleges that the abovementioned defendants violated the Takings Clause by allowing roofers to come onto Bullock's property to replace his roof.(13) Considering the three factors mentioned in Loretto regarding temporary invasions, however, allowing roofers temporarily to come onto Bullock's property does not constitute a "taking" under the Fifth Amendment. See Jones v. Phila. Police Dep't, 57 Fed. Appx. 939 (3d Cir. 2003) (holding that police officers entering an office building, conducting a two-hour search, and causing property damage does not constitute a taking); Hendler v. U.S., 952 F.2d 1364, 1371 (Fed. Cir. 1991) (noting that "the government's activity [may be] so short lived as to be more like the tort of trespass than a taking of property.").

13) Bullock does not assert any claim related to the roof replacement itself.

Therefore, I will grant the motion to dismiss Bullock's claims under § 1983 against Tredyffrin, Gleason, Baldassarree, Police Department, Barrar, and Doe #1.

Section 1983: Equal Protection Clause

Bullock also asserts § 1983 claims against the Association, Klein, Crandall, Berger, Houghton, and Best. He alleges that they violated the Equal Protection Clause of the Fourteenth Amendment by prohibiting homeowners owing more than $1,000 to the Association from voting at the July 16, 2003, meeting of Main Street Village homeowners. (Compl. ¶ 47.) Bullock has alleged no facts whatsoever indicating that the Association, Klein, Crandall, Berger, Houghton, or Best acted "under color of state or territorial law." Groman, 47 F.3d at 633. Therefore, I will grant the motion to dismiss Bullock's claims under § 1983 against the Association, Klein, Crandall, Berger, Houghton, and Best.

4. The Racketeer Influenced and Corrupt Organizations Act

Bullock asserts claims against all remaining defendants under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (2008) ("RICO"). The RICO statute prohibits joining an enterprise that affects interstate commerce and participating in that enterprise "through a pattern of racketeering activity or collection of unlawful debt."

18 U.S.C. § 1962(c). The statute contains a civil enforcement provision that states: "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court." 18 U.S.C. § 1964(c). The Supreme Court has held that a four-year statute of limitations applies to all civil actions under the RICO statute. Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 156 (1987).

Bullock alleges that all remaining defendants formed a "RICO Enterprise" that violated Bullock's state and federal rights.(14) He maintains that this enterprise formed on or around August 8, 2002. (Compl. ¶ 33.) Bullock initiated this action over four years later on February 14, 2007. Thus, the statute of limitations bars Bullock's claims. Therefore, I will grant the motions to dismiss Bullock's claims under the RICO statute against all remaining defendants.

C. Standing

Under U.S. Const. art. III, § 2, a plaintiff without standing cannot litigate a claim in federal

14) Bullock maintains, essentially, that a "RICO Enterprise" including all remaining defendants unlawfully failed to compensate him for personal property damage, imposed assessments, sued him for failure to pay, denied him access to the Association's records, denied him voting rights, had his roof replaced, and declined his candidacy for the Board.

court. Raines v. Byrd, 521 U.S. 811, 818 (1997). To have standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Id. At 818-19.

1. Fair Housing Act

Bullock asserts a claim against the Association under the Fair Housing Act, 42 U.S.C. §§ 3601-3631 (2008) ("FHA"), alleging that it violated the FHA by discriminating against the owner of 23 Sturbridge Lane. (Compl. ¶ 108.) Bullock lacks standing to bring this claim because he does not allege any personal injury arising from the Association's alleged discrimination. Therefore, I grant the motion to dismiss Bullock's claim under the FHA.

2. Telecommunications Act

Bullock asserts a claim against the Association under the Telecommunications Act of 1996, 47 U.S.C. §§ 153 and 255 (2008) ("TA"), alleging that it unlawfully "caused the owner of 23 Sturbridge Lane to take down a satellite dish which appeared to conform to the < 1 meter standard." (Compl. ¶ 137.) Bullock also lacks standing to bring this claim because he does not allege any personal injury arising from the satellite dish's removal. Therefore, I will grant the motion to dismiss Bullock's claim under the TA.

D. Criminal Claims

Bullock alleges three violations of criminal law

by one or more defendants. Specifically, he alleges criminal violations of:

! The Mail Fraud Act, 18 U.S.C. § 1341 (2008);

! The Wire Fraud Act, 18 U.S.C. § 1343 (2008); and

! The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (2008).

Bullock lacks authority to enforce criminal statutes and cannot obtain relief under them. Therefore, these claims must be dismissed.

Alternatively, Bullock requests that I direct the Office of the United States Attorney for this district to review Bullock's allegations and consider criminal prosecution. This Court cannot compel the United States Attorney to consider or initiate criminal prosecution. See Lichtman v. U.S., No. 07-2902, 2008 WL 3274113 at *2 (3d Cir. Aug. 11, 2008) ("[T]he DOJ's decision to prosecute or not prosecute an individual is within its discretion; thus, the DOJ cannot be compelled under 28 U.S.C. § 1361 to prosecute the alleged offenders."); Inmates of Attica Corr. Fac'y v. Rockefeller, 477 F.2d 375, 379 (2d Cir. 1973) ("federal courts have traditionally, and, to our knowledge, uniformly refrained from overturning, at the instance of a private person, discretionary decisions of federal prosecuting authorities not to prosecute persons regarding whom a complaint of criminal conduct is made."). Therefore, I deny Bullock's request.

E. State Law Claims

Given that all of Bullock's claims arising under federal law will be dismissed, I will exercise my discretion under 28 U.S.C. § 1367(c)(3) to dismiss all state law claims over which I exercised supplemental jurisdiction. Therefore, all remaining claims will be dismissed.

IV. CONCLUSION

Bullock asserts only nine federal claims. Four will be dismissed under Rule 12(b)(6), two will be dismissed because Bullock lacks standing, and three will be dismissed because they are criminal in nature. With all federal claims thus dismissed, I will exercise my discretion under 28 U.S.C. § 1367(c)(3) to dismiss all remaining state law claims. Separately, I will dismiss all claims against thirty (30) named defendants about whom Bullock makes no factual allegations.

Therefore, all claims and defendants will be dismissed.

ORDER

AND NOW, this _21st__ day of October, 2008, it is ORDERED that:

! Association Defendants' Motion to Dismiss or Strike the Third Amended Complaint (Doc. #58) is GRANTED;

! Motion of Defendants Scott F. Waterman and Black, Stranick & Waterman, LLP, to Dismiss the Third Amended Complaint (Doc. #60) is GRANTED;

! Motion of Defendants Christopher Conn and Atlantic Roofing Corp. to Dismiss the Third Amended Complaint (Doc. #61) is GRANTED;

! Tredyffrin Defendants' Motion to Dismiss the Third Amended Complaint (Doc. #64) is GRANTED;

! Motion of Defendants Blair H. Granger, David J. Scaggs, and Blair H. Granger & Associates, P.C., to Dismiss the Third Amended Complaint (Doc. #67) is GRANTED;

! Motion of Defendants Kenneth O. Spang, III, and Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP, to Dismiss the Third Amended Complaint (Doc. #70) is GRANTED;

! Defendant Sovereign Bank's Motion to Dismiss the Third Amended Complaint (Doc. #72) is GRANTED; and

! Plaintiff Andrew J. Bullock's Third Amended Complaint is DISMISSED as against Defendants Thomas J. Foga, Jr., Bryn Mawr Landscaping Co.,

Inc., Jim Miller Roofing and Sheet Metal, Inc., James Miller, Baci Brothers Builders, Inc., Arjet Baci, Syrja Baci, and Ilir Baci.

Because all claims have been dismissed as to all defendants, the instant case should be marked as CLOSED.

s/Anita B. Brody ANITA B. BRODY, J.

Supreme Court, U.S.
FILED
NOV 24 2009
OFFICE OF THE CLERK

1460

(2)

No. 09-518

IN THE

Supreme Court of the United States

ANDREW J. BULLOCK, IV,

Petitioner,

v.

ARTHUR S. KLEIN, ESQUIRE, ET AL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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Questions Presented

1. Has Petitioner presented compelling reasons for reversing the decisions of the District Court and the Third Circuit that there were no viable federal claims and declining to exercise jurisdiction of state claims?

2. Whether the Petitioner has properly preserved for appeal the issues raised before this Court?

3. Whether Petitioner's newly asserted Fifth Amendment claim is applicable to the Association Respondents?

List of Parties

All parties do not appear in the caption of this case on the cover page.

Petitioner:

Andrew J. Bullock, IV

Respondents[1]:

Arthur S. Klein, Esquire; Kenneth O. Sprang, Esquire; Scott Waterman, Esquire; Marie Rita Gleason Esquire; Thomas J. Crandall; Gerard Berger; Shayna Best; William Sunnick, Jr.; Donna M. Houghton; Ronald White; Christopher Conn; Sergeant Barrar; Officers John Doe (1-6); Captain Andrew Chambers; Hugh O'Hare; Thomas J. Foga, Jr.; Tredyffrin Township; Tredyffrin Township Police

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[1] This Brief is submitted on behalf of the following, collectively referred to as the "Association Respondents": Main Street Village Homeowners Association; Penco Management, Inc.; Monika Germono; Ronald A. White; Elizabeth Shingle (Bierly); Arthur S. Klein; Thomas J. Crandall; Gerard J. Berger; Shayna F. Best; William Sunick; Judith M. Wetzel; Donna Houghton; Patricia E. Evans; Kathryn Marinick; Edmund S. Pendleton, and Donald Franceschini.

Department; Main Street Village Homeowners' Association; Penco Management Inc.; Edmund S. Pendleton; Bryn Mawr Landscaping Company, Inc.; Atlantic Roofing Corp.; Jim Miller Roofing and Sheet Metal Inc.; James Miller; Wisler, Pearlstine, Talone, Craig, Garrity and Potash, LLP; Black Stranick and Waterman, LLP; Davis J. Scraggs, Esquire; Blair H. Granger, Esquire; Blair H. Granger and Associates, P.C.; Emeline Baldassarree; Judy DiFillipo; Warren Kampf; Bill Dehaven; Paul Drucker; Robert Lamina; Vincent Pompo, Esquire; Mark DeFeliciantonio; E. Brooks Keffer, Jr., Esquire; Elizabeth Shingle; Monika Germono; Thomas P. Hogan, Esquire; Sovereign Bank; Baci Brothers Builders, Inc.; Arjet Baci; Syrja Baci; Ilir Baci; Judith Wetzel; Patricia E. Evans; Kathryn Marinick; Don Franceschini.

Table of Contents

Questions Presented i

List of Parties ii

Table of Contents iv

Table of Citations v

Lower Court Opinions vii

Concise Statement of Jurisdiction 1

Constitutional Provisions 2

Concise Statement of the Case 4

Argument 8

I. The Petitioner Has Not Presented a Compelling Reason for This Court to Review the Well-Reasoned Decision of the Third Circuit. 8

II. Petitioner's did not raise the claims outlined in his Petition for Writ of Certiorari in the Courts below 11

III. Fifth Amendment Claim Not Applicable to the Association Respondents 15

Conclusion 19

Table of Citations

Cases

Albright v. Oliver, 510 U.S. 266 (1994) 14

Boise Cascade Corp v. United States,
296 F.3d 1339, 1353 (Fed. Cir. 2002) 8

Hall v. City of Philadelphia,
828 F.Supp. 365 (E.D.Pa. 1993) 16

K-2 Ski Co. v. Head Ski Co., Inc. 506
F.2d 471 (9th Cir. 1974) 12

Loretto v. Teleprompter Manhattan
CATV Corp., 458 U.S. 419 (1982) 8

McKeesport Hosp. v. Accreditation
Council forGraduate Medical Educ.,
24 F.3d 519 (3d Cir. 1994) 15

Mosley v. Yaletsko, 275 F.Supp.2d
608 (E.D.Pa. 2003) 15

Tuthill Ranch v. United States, 381 F.3d 1132
(Fed. Cir. 2004) 7

Statutes and Rules

28 U.S.C. § 1331 ..... 1, 6

28 U.S.C. § 1291 1

28 U.S.C. § 2101 1

42 U.S.C. § 1983 ..... passim

68 Pa.C.S. §§ 5101-5414 23

Fed. R. Civ. Pro.12(b)(6) 20

Citations of Opinions Issued

United States District Court for the Eastern District of Pennsylvania:

Bullock v. Klein, et al., 07-cv-0621 (E.D. Pa. October 21, 2008).

Third Circuit Court of Appeals:

Bullock v. Klein, et al., 2009 U.S. App. LEXIS 174143 (3d Cir. 2009).

Concise Statement of Jurisdiction

This Court has jurisdiction over the instant Petition for a Writ of Certiorari. The Petitioner alleged constitutional and federal statutory violations before the United States District Court for the Eastern District of Pennsylvania. 28 U.S.C. § 1331. The District Court dismissed the federal claims in Petitioner's Third Amended Complaint and declined to exercise jurisdiction over Petitioner's Pennsylvania state claims. Petitioner then appealed the District Court's Order to the Third Circuit Court of Appeals. 28 U.S.C. § 1291. The Third Circuit affirmed the judgment of the District Court on July 31, 2009.

The Petitioner filed the instant Petition for a Writ of Certiorari on October 29, 2009, the final day for filing his Petition. 28 U.S.C. § 2101.

Constitutional and Federal Statutory Provisions

1. United States Constitution, Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. 42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except

that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Concise Statement of the Case

Petitioner purchased 22 Sturbridge Lane, Wayne, PA on August 22, 1997. (Third Amended Complaint ¶ 1).[2] The residence is part of the Main Street Village planned community, which is managed by the Main Street Village Homeowners Association pursuant to a Declaration of Covenants and Easements. (Third Amended Complaint ¶ 1, 3). At some point after Petitioner purchased the property, the Association reconstructed a retaining wall on the common areas near his residence. (Third Amended Complaint ¶ 9). Petitioner alleged that the retaining wall was improperly constructed and caused water to flow into his basement during two rainstorms in October 1999. (Third Amended Complaint ¶ 11, 13).

Unhappy with the Association and its property manager's response to the situation, Petitioner stopped paying the assessments due to the Association. (Third Amended Complaint ¶ 16, 18). The Association initiated suit to collect the unpaid assessments in Pennsylvania District Court and Petitioner countersued. (Third Amended Complaint ¶ 19). Petitioner hired counsel and the claims between

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[2] The Association Respondents cite to the Third Amended Complaint instead of an Appendix as Petitioner did not number the pages of the attachments to his informal brief to the Third Circuit.

the Association and Petitioner were settled in May 2001, although Petitioner alleged that he never agreed to the settlement terms. (Third Amended Complaint ¶ 22, 23).

In January 2003, Petitioner requested the complete records of the Association for review and copying in order to ensure the proper operation of the Association. (Third Amended Complaint ¶ 36). The Association, through its counsel, declined his request because it was overbroad and because Petitioner was not a member of the Association in good standing due to unpaid assessments. (Third Amended Complaint ¶ 39).

In July 2003, the Board of Directors of the Association held a membership meeting concerning the replacement of the roofs in the community. (Third Amended Complaint ¶ 45). Homeowners who owed more than $1,000 in assessments were not permitted to cast a vote concerning the special assessment needed for the roof replacement. (Third Amended Complaint ¶ 45).

After the Association approved the assessment authorizing the replacement of all roofs in the community, the Association, through its Board President, requested that the Township issue building permits for the roof replacement work. (Third Amended Complaint ¶ 50-51). On November 7, 2003, Petitioner requested that the Township not issue a building permit for his residence. (Third Amended

Complaint ¶ 52). On the day his roof was being replaced, Petitioner contacted the Tredyffrin Township Police to try to prevent the roofers from accessing his property. (Third Amended Complaint ¶ 62-63). Despite Petitioner's protestations, the roof at 22 Sturbridge Lane was removed and replaced.

The factual allegations in Petitioner's Third Amended Complaint are confusing, excessive and non-sequential. What begins as a story concerning the many disputes between Petitioner and the Association dating back to 1999, the Third Amended Complaint degenerates into a confusing series of sometimes-unrelated paragraphs accusing a wide variety of individuals of conspiring against him possibly as part of a RICO scheme.

Although the Third Amended Complaint was confusing, it was clear that Petitioner was attempting to allege constitutional and federal statutory violations, so that he could invoke federal jurisdiction pursuant to 28 U.S.C. § 1331. The District Court spent considerable time reviewing the Third Amended Complaint in an attempt to determine all of the claims that Petitioner was attempting to allege. The District Court properly determined that even if accepted as true, the facts alleged by Petitioner did not state any federal claims for which relief could be granted. The Third Circuit also conducted a thorough plenary review of the allegations in the Third Amended Complaint and similarly determined that Petitioner did not state any federal causes of action against the

Association Respondents or any of the other numerous Defendants named in the Third Amended Complaint. In an unreported Opinion, the Third Circuit affirmed the District Court.

Argument

I. The Petitioner Has Not Presented a Compelling Reason for This Court to Review the Well-Reasoned Decision of the Third Circuit.

Petitioner claims that this Court should grant his Petition for a Writ of Certiorari because he believes that there is a "split between the recognized and protected property rights of homeowners in planned communities with regard to easements, as the FCC case, Tuthill, and this case seem to differ." (See, Petition for Writ of Certiorari, p. 9). The Association Respondents are not sure to what Petitioner is referring as neither Tuthill nor "the FCC case[3]" have anything to do with property rights in planned communities. The cases referred to by Petitioner concern the Fifth Amendment's "takings clause." Even the cases cited by Petitioner make it clear that the Association's roof replacement project was not a "taking" in the Constitutional sense.

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[3] Respondents believe that Petitioner is referring to *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

Supreme Court Rule 10 states that the Court will only grant a writ of certiorari for compelling reasons. The Court will consider granting a petition requesting a writ of certiorari if "a United States Court of appeals has entered a decision in conflict with another United States court of appeals on the same important matter." Supreme Court Rule 10(a). Despite Petitioner's allegations, the Third Circuit has not entered a decision in conflict with any other federal appellate court case.

The Third Circuit's decision to affirm the District Court's dismissal of Petitioner's Fifth Amendment claims is consistent with the Federal Circuit's decision in *Tuthill Ranch* and this Court's decision in *Loretto*. Both *Tuthill Ranch v. United States*, 381 F.3d 1132 (Fed. Cir. 2004) and *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) hold that a permanent physical occupation of property by the government or by a third party acting under government authority is required in order to find a taking. "A physical occupation, as defined by the Court, is a permanent and exclusive occupation that destroys the owner's right to possession, use and disposal of the property." *Tuthill Ranch v. United States*, supra., citing *Boise Cascade Corp v. United States*, 296 F.3d 1339, 1353 (Fed. Cir. 2002).

In this case, the removal and replacement of Petitioner's roof by the Association could never constitute a permanent physical occupation of Petitioner's property by the government. Petitioner was a resi-

dent of a planned community and subject to a Declaration of Covenants and Easements. The declaration gave the Association to right to replace the roofs in the community[4]. Despite Petitioner's objections, the roof was removed and replaced at the direction of the Association. The replacement of the roof was within the rights granted to the Association in the Declaration of Covenants and Easements that Petitioner agreed to when he purchased his home within the community. The removal and replacement of the roof was not a permanent physical occupation. During and after the roof replacement, Petitioner had the ability to possess, use and dispose of his property.

There is no split between recognized property rights set forth in previous case law and the District Court and Third Circuit decisions in this case. Petitioner was not subject to a permanent physical taking of his property by the government no matter how upset he was with the Association's decision to replace the roof over his Unit. There is no compelling reason for the Court to grant the Petition and consider the merits of this case.

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[4] The Declaration of Covenants and Easements states, in pertinent part, "the Association shall provide upon any lot requiring same, when necessary in the opinion of the Board of Directors of the Association to preserve the beauty, quality and value of the neighborhood . . .roof repair and replacement. . .." (Cited by the Third Circuit as Supplemental Appendix 83).

Petitioner has not presented any reason why this Court should overturn the District Court and the Third Circuit's decision that the Petitioner failed to state a federal claim against any of the numerous Respondents. The District Court allowed the Petitioner to Amend his Complaint three times in order to allow the Petitioner the opportunity to state a viable federal claim. After several attempts, it was clear that Petitioner's claims against the Association and many other Respondents failed to state a federal cause of action. There is nothing compelling or even unique about the claims raised by Petitioner and there is no reason for this Court to review the Third Circuit's well-reasoned ruling.

II. Petitioner's did not raise the claims outlined in his Petition for Writ of Certiorari in the Courts below.

Petitioner's Third Amended Complaint, which was dismissed by the District Court, is a rambling document alleging a variety of state and federal claims. His Third Amended Complaint contained two hundred and six numbered paragraphs and eight counts but failed to state which claims he was raising against which of the numerous defendants named in the caption of his Complaint. The District Court carefully reviewed the Third Amended Complaint and located nine federal claims raised by Petitioner. Those claims were: 1) Fair Debt Collection Practices Act; 2) 42 U.S.C. § 1983, Taking Clause; 3) 42 U.S.C. § 1983, Equal Protection; 4) Racketeer Influenced

and Corrupt Organizations Act (civil); 5) Fair Housing Act; 6) Telecommunications Act; 7) Mail Fraud Act; 8) Wire Fraud Act; and 9) Racketeer Influenced and Corrupt Organizations Act (criminal). See, *Bullock v. Klein, et al.*, 07-cv-0621 (E.D. Pa. October 21, 2008). It appears that Petitioner is only seeking review of his Fifth Amendment Taking clause claim made applicable to state actors through 42 U.S.C. § 1983. However, Petitioner makes new allegations of fraud and claims that the Association exceeded its authority to replace his roof in his Petition.

Petitioner begins his "Statement of the Case" with allegations that the Association has perpetrated some type of fraud against him for failing to provide discovery to Petitioner during the *state court* litigation. (See, Petition for Writ of Certiorari, p. 3). Association Respondents are unsure what these allegations concern as they were not a part of the Third Amended Complaint and never before raised in this litigation.

Petitioner and the Association were involved in two separate state court cases during the time that Petitioner resided at 22 Sturbridge Lane. The first suit concerned water intrusion into Petitioner's basement that may have been caused by an improperly constructed retaining wall. In that litigation, Petitioner was represented by counsel and the matter was settled out of court. Thereafter, the Association instituted collection proceedings against Petitioner for his failure to pay the assessments due

to the Association. There are no allegations in the Third Amended Complaint that Petitioner sought discovery during the collection case that was denied to him.

In his Third Amended Complaint, Petitioner did allege that he sought records from the Association to ensure the proper administration of the Association. (Third Amended Complaint ¶ 36). Petitioner never alleged that the Association's failure to provide its records had anything to do with the state court litigation, or which state court litigation. In addition, if Petitioner had been denied discovery in his state court cases, his recourse would be to the state courts. Association Respondents can think of no federal cause of action that would accrue for an alleged failure to provide discovery in a state court case.

More importantly, Petitioner never raised this claim in his Third Amended Complaint. The District Court or the Third Circuit never considered this claim in the Third Amended Complaint and never ruled on the issue. This claim has been waived by the Petitioner and should not be considered by this Honorable Court. *K-2 Ski Co. v. Head Ski Co., inc.* 506 F.2d 471 (9th Cir. 1974).

In the Questions Presented portion of the Petition, it appears that the Petitioner is asking this Court to decide whether the Association's decision to replace the roofs in the Community exceeded its authority under the Declaration of Covenants and Easements.

Petitioner never raised this claim in his Third Amended Complaint or in his appeal to the Third Circuit. Indeed, the District Court stated, in a footnote, that Petitioner "does not assert any claim related to the roof replacement itself." (Opinion, 10/21/08, footnote 13).

The Third Circuit made its own determination that the Association had the authority to replace the roof in its plenary review of the District Court's dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). However, that determination was made as part of the Fifth Amendment "takings" claim made against the Township defendants pursuant to 42 U.S.C. § 1983. Petitioner never based a federal claim in his Third Amended Complaint against the Association on an allegation that the Association exceeded it authority under the Declaration of Covenants and Easements to replace the roof, nor could he. There is no federal law or Constitutional authority for a federal court to involve itself in such a decision. If Petitioner believed his Association was acting outside of the authority granted to it in the Declaration of Covenants and Easements, Petitioner could have filed a claim in state court. He could have requested an injunction to prevent the roof replacement while the Court determined the limits of the Association's authority. This Court should decline to entertain new theories of recovery not alleged in the Third Amended Complaint and not decided by the Lower Courts.

III. Fifth Amendment Claim Not Applicable to the Association Respondents

Should this Court believe that Petitioner adequately alleged a Fifth Amendment Taking Clause claim against the Association Respondents in his Third Amended Complaint, this Court should deny review of this claim. The Association and its Executive Board are private actors. Their actions in determining that the roofs needed to be replaced and undertaking all necessary actions to have to roofs replaces does not implicate a Constitutional taking.

Federal Constitutional violations have no internal enforcement mechanisms. Individuals are permitted to bring claims concerning violations of the Fourteenth Amendment and other amendments because of 42 U.S.C. § 1983. Section 1983 is not itself source of substantive rights, but merely provides method for vindicating federal rights elsewhere conferred. Albright v. Oliver, 510 U.S. 266 (1994). The language of 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

> and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

To make out a claim under §1983, a plaintiff must demonstrate that the conduct of which he is complaining has been committed under color of state or territorial law and that it operated to deny him a right or rights secured by the Constitution and laws of the United States; the plaintiff must also establish that it was the acts of the defendant which caused the constitutional deprivation. *Mosley v. Yaletsko*, 275 F.Supp.2d 608 (E.D.Pa. 2003). State action for purposes of a §1983 claim may be found if a private party has acted with help of or in concert with state officials, if a private party has been delegated power traditionally exclusively reserved to state, or if there is sufficiently close nexus between the state and the challenged action of a private entity so that the action of latter may fairly be treated as that of the state itself. *McKeesport Hosp. v. Accreditation Coun-*

cil for Graduate Medical Educ., 24 F.3d 519 (3d Cir. 1994).

Main Street Village is a planned community in Chester County, Pennsylvania that is governed by the Pennsylvania Uniform Planned Community Act (68 Pa.C.S. §§ 5101-5414) and a recorded Declaration of Covenants and Easements. Main Street Village consists of individually-owned town homes and common areas owned by the Association for the benefit of the homeowners. The Board is comprised of homeowners who voluntarily administer the affairs of the Association. There is no allegation or implication that the Association or its Board members are state actors or that their actions can somehow be construed as state action. The District Court properly dismissed Bullock's equal protection claim for failure to allege any state action as required by 42 U.S.C. § 1983. The same reasoning must apply to any new claim raised before this Court that the Association Respondents somehow violated Petitioner's Fifth Amendment rights.

Finally, it should also be noted that Petitioner's Fifth Amendment claim is time-barred. Civil rights claims under §1983 are subject to Pennsylvania's two-year statute of limitations for personal injury claims. Hall v. City of Philadelphia, 828 F.Supp. 365 (E.D.Pa. 1993). Petitioner initially filed this federal action on February 15, 2007, more than two years after the roof was replaced in July, 2004.

This Court should decline to review Petitioner's claims under the Fifth Amendment Takings clause as against the Association. Petitioner never before raised this claim against the Association Respondents. Further, the Petitioner cannot establish a Constitutional violation against the Association Respondents as they are not state actors. Finally, Petitioner's Fifth Amendment claim is time-barred.

Conclusion

For all the reasons set forth above, the Association Respondents respectfully request that this Honorable Court deny Petitioner's Writ of Certiorari.

Respectfully submitted,

Law Offices of Hal A. Barrow
Hal. A. Barrow
Counsel for Association
Respondents

Supreme Court, U.S.
FILED
NOV 25 2009
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 09-518

ANDREW BULLOCK, IV
Appellant

v.

TREDYFFRIN TOWNSHIP, TREDYFFRIN TOWNSHIP POLIC DEPARTMENT, JUDY L. DIFILLIPO, WARREN E. KAMPF, BILL DEHAVEN, ROBERT W. LAMINA, E. BROOKS KEFFER, JR., PAUL J. DRUCKER, MARK DIFELICIANTONIO, MARIE R. GLEASON, HUGH O'HARE, EMELINE BALDASSARRE, VINCENT POMPO, THOMAS P. HOGAN, CAPTAIN ANDREW CHAMBERS, SERGEANT BARRAR, OFFICER JOHN DOE #1, OFFICER JOHN DOE #2, OFFICER JOHN DOE #3, OFFICER JOHN DOE #4, OFFICER JOHN DOE #5 AND OFFICER JOHN DOE #6
Respondents

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

Has the Petitioner presented a compelling reason for the Court to grant Certiorari to review the Entry of Judgment of the United States Court of Appeals for the Third Circuit given that:

A. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed the Petitioner's civil action pursuant to F.R.C.P. 8(a); and,

B. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed the Petitioner's civil action pursuant to F.R.C.P. 12(b)(6); and,

C. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law; and,

D. In the instant matter, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court.

II. TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
TABLE OF AUTHORITIES	3
CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT	8
COUNTER-STATEMENT OF THE CASE	9
SUMMARY OF ARGUMENT	13
ARGUMENT	14
CONCLUSION	27

III. TABLE OF AUTHORITIES

CASES	PAGE
Alfano v. E.F. Hutton & Co., Inc., 606 F. Supp.100 (E.D. Pa. 1985)	16
Boykins v. Ambridge Area Sch. Dist., 621 F.2d 75 (3d Cir. 1980)	15
Burns v. Pa. Dep't of Corr., 544 F.3d 279 (3d Cir. 2008)	22
Deibler v. Rehoboth Beach, 790 F.2d 328 (3d Cir. 1986	22
Ersek v. Township of Springfield, 822 F. Supp. 218 (E.D. Pa. 1993), *aff'd*, 102 F.3d 79 (3d Cir. 1996)	16
Evancho v. Fisher, 423 F.3d 347 (3d Cir. 2005)	15, 16

Estelle v. Gamble,
429 U.S. 97 (1976) 17

Gomez v. Toledo,
446 U.S. 635 (1980) 18

Groman v. Township of Manalapan,
47 F.3d 628 (3d Cir. 1995) 18, 19

Haines v. Kerner,
404 U.S. 519 (1972) 17

Hendler v. United States,
952 F.2d 1634 (Fed.Cir.1991) 20

Independent Enterprises, Inc. v.
Pittsburgh Water & Sewer Authority,
103 F.3d 1165 (3d Cir. 1997) 23

Jones v. Philadelphia Police Department,
57 Fed. Appx. 939,
2003 U.S. App. LEXIS 1426
(3d cir. 2003) 19, 20, 22

Loretto v. Teleprompter Manhattan CATV Corp.,
458 U.S. 419 (1982) 19, 20

Matthews v. Eldridge,
424 U.S. 319 (1976) 23

Monell v. Department of Social Services,
436 U.S. 658 (1978) 19

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 22

Oklahoma City v. Tuttle,
471 U.S. 808 (1985) 18

Penn Central Transp. Co. v. New York City,
438 U.S. 104 (1978) 20

Rode v. Dellarciprete,
845 F.2d 1195 (3d Cir. 1988) 15

Wolff v. McDonnell,
418 U.S. 539 (1974) 22

Zinermon v. Burch,
494 U.S. 113 (1990) 22-23

CODES

42 U.S.C. § 1983 11, 13,
17-18, 19

RULES

F.R.C.P. 8(a) 8, 12, 13,
14, 15, 16
17

F.R.C.P. 12(b)(6) 8, 12, 17

Rules of Supreme Court of U.S.

Rule 10 8, 14, 26

OTHER AUTHORITIES

U.S. Const. amend. V 11-12, 13
17, 19, 21

U.S. Const. amend. XIV 12, 13

BOCA Code § 107.3 24

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In the Petition for Writ of Certiorari, the Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, the United States Court of Appeals for the Third Circuit affirmed the Judgment of the United States District Court of the Eastern District of Pennsylvania, which dismissed the Petitioner's civil action, based upon his failure to comply with F.R.C.P. 8(a). The Judgment also dismissed the Petitioner's civil action based upon his failure to state a claim pursuant to F.R.C.P. 12(b)(6). The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

V. COUNTER-STATEMENT OF THE CASE

This matter derives from a civil action that was filed in the United States District Court for the Eastern District of Pennsylvania by the Petitioner, Andrew J. Bullock, IV (hereinafter "Petitioner"). In his initial Complaint, the Petitioner sought a preliminary injunction staying the sheriff's sale of his residence at 22 Sturbridge Lane, Wayne, PA. The initial Complaint never was served upon the "Tredyffrin defendants" (hereinafter "Respondents"[1]) and the injunction request was denied. On September 24, 2007, the Petitioner was granted permission to file an Amended Complaint. Petitioner also failed to serve this complaint upon the Respondents. Shortly thereafter, the sheriff's sale took place and the Petitioner was safely evicted from his residence.

In the interim, the Petitioner filed a Motion for Leave to File a Second Amended Complaint and a Motion for Leave to File a Third Amended Complaint. Prior to District Court's ruling on the pending Motions, and without Court permission, the Petitioner served a document entitled "Third

[1] The following parties are hereinafter collectively referred to as the "Respondents:" Tredyffrin Township, Tredyffrin Township Police Department, Judy L. Difillipo, Warren E. Kampf, Bill DeHaven, Robert W. Lamina, E. Brooks Keffer, Jr., Paul J. Drucker, Mark Ditelciantonio, Marie E. Gleason, Hugh O'Hare, Emeline Baldassarree, Vicent Pompo, Thomas P. Hogan, Captain Andrew Chambers, Sergeant Barrar, Officer John Doe #1, Officer John Doe #2, Officer John Doe#3, Officer John Doe #4, Officer John Doe #5 and Officer John Doe #6.

Amended Complaint" on the Respondents[2], and left multiple copies of the Complaint in the lobby of Lamb McErlane, P.C., the solicitor for defendant Tredyffrin Township. In response thereto, the Respondents filed a Motion to Dismiss the Third Amended Complaint.

On February 28, 2008, the Court entered an Order granting the Petitioner leave to file a Third Amended Complaint by March 21, 2008 and denying Petitioner's Motion for Leave to File a Second Amended Complaint as moot. Petitioner filed his Third Amended Complaint on March 21, 2008. Accordingly, the previously filed Motion to Dismiss Third Amended Complaint of the Respondents was denied without prejudice as moot.

The Third Amended Complaint essentially revolved around a series of disputes between the Petitioner and Main Street Village Homeowner's Association (hereinafter the "Homeowners' Association"). Petitioner's former residence was part of the Homeowner's Association. According to the Petitioner, he did not authorize the Homeowners' Association to request the issuance of building permits for roof renovations on his home. Despite the

[2] Specifically, the Petitioner served the "Third Amended Complaint" upon Vincent Pompo, Esquire and Police Captain Andrew Chambers.

Petitioner's objections, the Homeowners' Association obtained a building permit for the roof renovations. With regard to the Respondents, the majority were merely listed in the caption of the Complaint or mentioned in passing. The only substantive allegation regarding the Respondents was that the Petitioner had a limited communication with Township Manager, Marie Rita Gleason, (hereinafter referred to as "Gleason"). Petitioner also requested the presence of officers from the Tredyffrin Police Department to prevent roofers from entering his property.

Based on the allegations contained in the Third Amended Complaint, the Petitioner purported to assert a broad range of claims: fraud upon the court, fraud, mail fraud, wire fraud, civil rights violation, infringement on Constitutional rights, Section 1983 Complaint, Civil RICO Violation, negligence, negligence per se, legal malpractice, practicing law without a license, violation of the Fair Housing Act, Third Party Derivative Action, insurance fraud, violation of the Unfair Trade Practices and Consumer Protection Law and violation of the Telecommunications Act of 1996.

Specifically, against the Respondents, the Petitioner attempted to assert a claim under 42 U.S.C. § 1983, alleging that they infringed upon his "Fifth

Amendment Right of Property." Petitioner also claimed that the Respondents violated his "Fourteenth Amendment Right to Due Process." However, the only relief sought against the Respondents was a court directive to provide reports and records of all officers who responded to his home.

Petitioner failed to serve the Third Amended Complaint upon the Respondents, in accordance with Rules of Federal Procedure. Despite this, the Respondents re-filed their Motion to Dismiss the Third Amended Complaint. On October 21, 2008, the District Court granted all pending Motions to Dismiss the Third Amended Complaint and sua sponte dismissed the Third Amended Complaint as to all remaining defendants. The District Court dismissed the Petitioner's civil action, based upon his failure to comply with F.R.C.P. 8(a), as well as his failure to state a claim pursuant to F.R.C.P. 12(b)(6). The District Court further directed that this case be marked as closed, as all claims had been dismissed as to all of the defendants. Thereafter, on November 21, 2008, the Petitioner filed an appeal to the United States Court of Appeals for the Third Circuit. On July 31, 2009, the Court of Appeals for the Third Circuit issued an Entry of Judgment that affirmed the Judgment of the District Court.

Petitioner now seeks Certiorari in this Honorable Court.

VI. SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit properly affirmed the District Court's dismissal of the Petitioner's Third Amended Complaint in its entirety for various reasons. First, the Petitioner failed to meet the basic pleading requirements of F.R.C.P. 8(a), as the allegations contained in the Third Amended Complaint provide no notice to the Respondents that would allow a defense.

Second, the Petitioner failed to state a prima facie case under 42 U.S.C. § 1983 based upon a violation of his Fifth Amendment right to property. Specifically, in allowing roofers temporarily onto the Petitioner's property for the purpose of renovations does not constitute a "taking" under the Fifth Amendment, especially as to the Respondents. Petitioner also failed to assert a § 1983 claim for a violation of his Fourteenth Amendment right to due process. Petitioner did not demonstrate the requisite denial of adequate notice or opportunity to be heard regarding his appeal of the building permit.

Finally, in the Petition for Writ of Certiorari, the Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in

the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VII. ARGUMENT

A. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF THIRD AMENDED COMPLAINT BASED UPON THE PLAINTIFF'S FAILURE TO COMPLY WITH F.R.C.P. 8(a).

Out of the hundreds of paragraphs contained within the Third Amended Complaint and the hundreds of pages of attachments, the majority of the Respondents are merely listed in the caption or mentioned in passing. Such defective allegations violated even the "notice pleading" rules of the Federal Rules of Civil Procedure and required dismissal of the Third Amended Complaint, as to the Respondents. Specifically, Rule 8(a)(2) of the Federal Rules of Civil Procedure states that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.*

The Third Circuit and other courts have clearly addressed the requirements of Rule 8(a) and have demanded that plaintiffs make individualized pleadings for named individual government defendants, such as the Respondents. While there is no heightened pleading requirement for constitutional claims against municipal officials, such complaints still must meet the basic pleading requirements of Rule 8(a). *See Evancho v. Fisher*, 423 F.3d 347, 352-53 (3d Cir. 2005). Applying this standard, the Court has stated that "[a]n individual government defendant in a civil rights action must have personal involvement in the alleged wrongdoing . . . . [p]ersonal involvement can only be shown through allegations of personal direction or of actual knowledge and acquiescence." *Id.* at 353 (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). Furthermore, a plaintiff can not rely upon allegations that a defendant may have been involved in the alleged wrongdoing merely because of his or her position. *Evancho*, *supra* at 354. Such a complaint against individual defendants is adequate only where the complaint states "the conduct, time, place, and persons responsible." *Id.* at 353 (citing *Boykins v. Ambridge Area Sch. Dist.*, 621 F.2d 75, 80 (3d Cir. 1980).

Accordingly, where a plaintiff fails to make individualized allegations regarding the conduct of specifically named individual defendants (*i e.*, stating exactly which individual defendant did what conduct), courts have consistently dismissed such complaints *See Evancho*, *supra* at 354 (dismissing complaint under Rules 8(a) and 12(b)(6)). *See also Ersek v. Township of Springfield*, 822 F. Supp. 218 (E.D. Pa. 1993), *aff'd*, 102 F.3d 79 (3d Cir. 1996) (it is insufficient for plaintiff simply to assert all claims against "all defendants" without attempting to specify which defendant did what); *see also Alfano v. E.F. Hutton & Co., Inc.*, 606 F. Supp. 1100, 1117-18 (E.D. Pa. 1985) (dismissing claims where plaintiff failed to describe defendant's role in conspiracy, general allegations considered insufficient).

As stated above, in the instant case, there are no individualized allegations against the Respondents. Indeed, almost all of the Respondents are merely listed in the caption of the Complaint. Such allegations are plainly insufficient under Rule 8(a), as they provide no notice to the Respondents that would allow a defense. Regarding the Respondents, at most, the Petitioner has alleged that the police were merely present and that a permit was issued for roof renovations. However, neither allegation is sufficient to state any sort of a claim for anything. Accordingly, the Petitioner has failed to set forth a

definite statement demonstrating that he is entitled to relief regarding the Respondents pursuant to Rule 8(a).

Petitioner's argument that *pro se* filings should be "liberally construed" does not entitle him to Certiorari. This Honorable Court has opined that a *pro se* complaint must be held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citing *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). However even applying these liberal standards, based on the foregoing, the Petitioner's claims against the Respondents are not cognizable.

B. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF THE THIRD AMENDED COMPLAINT PURSUANT TO F.R.C.P. 12(b)(6) , AS THE PLAINTIFFS FAILED TO STATE A CLAIM UNDER 42 U.S.C. § 1983 BASED UPON A VIOLATION OF THE FIFTH AMENDMENT RIGHT TO PROPERTY AND THE FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

Petitioner's also argues that Certiorari should be granted, as his property rights were violated under the Takings Clause of the Fifth Amendment.

The language of 42 U.S.C. § 1983 provides, in pertinent part:

§ 1983. Civil action for deprivation of rights

Every person, who, under color of any statute,

ordinance, regulation, custom, or usage, of any State…subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

Id. See also Groman v. Township of Manalapan, 47 F.3d 628, 633, n.4 (3d Cir. 1995).

When interpreting this language, the Courts have opined that the statute does not create substantive rights; but, rather, it provides a remedy for the violation of rights created by federal law. *Groman, supra* at 633 (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985)). Accordingly, in order to establish a prima facie case under 42 U.S.C. § 1983, a plaintiff must demonstrate: "(1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman, supra* (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)). Furthermore, with regard to § 1983 claims against a municipality, the Courts have placed an additional burden of proof upon the plaintiff. Specifically,

"[A] plaintiff must prove the existence of a policy or custom that has resulted in a constitutional violation..." *Groman, supra at* 637; *see also Monell v. Department of Social Services,* 436 U.S. 658, 694-95 (1978) (A government entity is responsible under § 1983, when execution of a government's policy or custom, whether made by its lawmakers or by those whose acts represent official policy, inflicts the injury).

In the case at bar, the Petitioner claims that the Respondents violated his "right of property" under the Takings Clause of the Fifth Amendment.. The Takings Clause states: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

In order to establish a § 1983 claim based upon a violation of the Fifth Amendment right to property, a plaintiff must establish that an actual "taking" of his private property occurred. When analyzing this issue, the Courts have acknowledged the distinction between a permanent physical occupation, a physical invasion short of an occupation and a regulation that merely restricts the use of the property. *Jones v. Philadelphia Police Department*, 57 Fed. Appx. 939, 941 (3d Cir. 2003) (citing *Loretto V. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 430 (1982)). Therefore, not every physical

invasion is considered a "taking." *Jones, supra* (citing *Loretto*, 458 U.S. at 436, n.12). The Courts have subjected temporary invasions to a "complex balancing process to determine whether they are a taking...[because] they do not absolutely dispossess the owner of his rights to use, and exclude others from, his property." *Jones, supra* at 941-942 (citing *Loretto, supra*).

In applying this balancing test, the Courts consistently have found several factors to be of particular significance – "the economic impact of the regulation, the extent to which it interferes with investment-backed expectations and the character of the governmental action." *Jones, supra*, (citing *Loretto*, 458 U.S. at 432); *see also Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978)). Considering these factors, the Court in *Jones* held that police officers conducting a two-hour search of a privately owned office building and causing property damage did not amount to a "taking." *Id.* at 943. Specifically, the Court reasoned that "[i]n addition to – and partly because – of the short duration of the 'invasion,' it did not interfere with many, even most, of the traditional rights of property owners." *Id.*; *see also Hendler v. United States*, 952 F.2d 1364, 1371 (holding that "the government's activity was so short lived as to be more like the tort of trespass than a taking of property").

Instantly, it has been alleged that the Respondents were in violation of the Takings Clause, when they permitted roofers onto the plaintiff's property for the purpose of replacing his roof. When applying the three abovementioned factors regarding temporary invasions to the facts presently before this Court, allowing roofers temporarily onto the plaintiff's property does not constitute a "taking" under the Fifth Amendment. First, the economic impact to the plaintiff would be beneficial, as the roof replacement would serve to enhance the value to the property. Moreover, it would have been to the plaintiff's detriment had the roof not been replaced. Plaintiff's unit is part of a 5-unit building; therefore, to replace the roofs of neighboring units, without replacing the plaintiff's roof, would cause a seam to exist between the old and new roofs, which could be expected to leak. Second, the interference with the plaintiff's investment backed expectations was minimal. Plaintiff purchased the property with the knowledge that the Homeowner's Association had authority to repair and replace his roof, as it is explicitly stated in the Declaration of Covenants and Easement dated 12/20/1984, Article VIII, Exterior Maintenance. Finally, the action of the Respondents, in issuing the building permit, was standard procedure and was part of basic regulatory function. The issuance of building permits is a ministerial duty of the

Respondents, as outlined in Ordinances available for public review. Thus, as in *Jones, supra*, after consideration of these three factors, the actions of the Respondents did not interfere with the plaintiff's property rights.

Therefore, because the Respondents' issuance of the building permit did not infringe upon the Petitioner's protected property interests, it follows that his procedural due process arguments do not state a claim upon which relief may be granted. *See Burns v. Pa Dep't of Corr.*, 544 F.3d 279, 285 (3d.Cir.2008) ("To prevail on a procedural due process claim, a litigant must show 1) that the state deprived him of a protected interest in life, liberty or property..."). A plaintiff must further establish that the State action not only burdened a protected right, but also, that said right was deprived without a fair hearing either because a claimant did not receive adequate notice or a reasonable opportunity to be heard. *Deibler v. Rehoboth Beach*, 790 F.2d 328, 331 (3d Cir. 1986); *see also Wolff v. McDonnell*, 418 U.S. 539 (1974); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

To determine what procedural protections the Constitution requires in a particular case, the Courts weigh the following factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such

> interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Zinermon v. Burch, 494 U.S. 113, 127 (1990) (citing *Matthews v. Eldridge*, 424 U.S. 319 at 435 (1976)).

Instantly, the Petitioner attempted to allege that his procedural due process rights were violated when the Respondents issued a permit for renovations to his roof. Although, an ownership interest in property is considered a protected right within the meaning of the Due Process Clause, *Independent Enterprises, Inc. v. Pittsburgh Water & Sewer Authority*, 103 F.3d 1165 (3d Cir. 1997), the plaintiff has failed to establish that said right was deprived without adequate notice or reasonable opportunity to be heard. To the contrary, the allegations and undisputed facts of this case demonstrate that the plaintiff was afforded constitutionally adequate notice and opportunity to be heard before the permit was issued.

Tredyffrin Township received request letters from defendant Arthur Klein, Esquire, president of the homeowners association, on October 20, 2003 and

December 17, 2003, with regard to permits for the roof work for the entire association. The actual application was not filed until June 24, 2004 by Atlantic Roofing Corp. and it certified that "the proposed work is authorized by the owner of record." The permit was issued on June 25, 2005, but because of the Petitioner's objections, township manager, Marie R. Gleason, wrote to the roofing company on July 16, 2004, advising that until the Petitioner's objections were resolved, proceeding with the new roof would be done at the company's own risk.

In the meantime, the Petitioner had been provided with a copy of the township's 993 BOCA code, Section 107.3, which states:

> If the application is made by a person other than the owner in fee,it shall be accompanied by an affidavit of the owner or the qualified applicant or a signed statement of the qualified applicant witnessed by the code official or his designee to the effect that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application.

Id. In this regard, the township had been provided with the following evidence that the Homeowners Association was authorized to request a permit for, and complete, the roof replacement:

1. Declaration of Covenants and Easement dated 12/20/1984, Article VIII, Exterior Maintenance; Assessment Therefor, Section I Exterior

Maintenance. In addition to maintenance of the common areas and facilities, the association shall provide upon any lot requiring same, when necessary in the opinion of the board of directors of the association to preserve the beauty, quality and value of the neighborhood, maintenance, including paint repair, roof repair and replacement, gutters, downspouts, exterior building surfaces and yard clean up and/or maintenance..

2. Minutes of the special roof meeting of 7/16/03 at which the owners voted 43 to 13 to approve the special assessment for the roofing project.

3. Unanimous consent of the directors of the Main Street Village Homeowners Association dated 7/16/03 approving the roof replacement and assessment.

4. Copies of the By-laws of the Main Street Village Homeowners Association.

5. Revised rule and regulations of the Main Street Village Homeowners Association.

Petitioner appealed the issuance of the permit on July 15, 2004, which subsequently was assigned to the BOCA Appeals Board, pursuant to the code and ordinance. The Board consisted of seven members, including an engineer and architect who were not employed by the township. Notice of the hearing was provided on August 6, 2004 and a reminder e-mail was sent to the Petitioner on August 10, 2004. The hearing was conducted on August 11, 2004 and the Petitioner attended. A decision was issued by the Board on August 23, 2004, which upheld the issuance of the permit. The decision cited the Declaration Article XIII, Section I, Exterior Maintenance, together with the minutes of the special roof meeting, Homeowners Association unanimous

consent of directors, declaration, by-laws and revised rules and regulations. The decision concluded that the homeowners association was authorized to maintain the exterior of all buildings including roofs, and that the homeowners approved the roof replacement and assessment by a vote of forty-three to thirteen. Accordingly, the plaintiff's appeal was denied.

As noted above, the Petitioner failed to demonstrate that he received constitutionally inadequate notice or opportunity to be heard with regard to the appeal of the issuance of the building permit for his roof renovations. Therefore, the plaintiff's claim that he was denied procedural due process does not warrant Certiorari with this Court. Petitioner does not allege any reason why this Honorable Court would have jurisdiction to hear this claim. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VIII. CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to deny the Petition for Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

BY: _____

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